United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75 4248

To be argued by
James B. Lewis

UNITED STATES COURT OF APPEALS
for the Second Circuit

ESTATE OF AMY ANN McGINNIS SPALDING,
Deceased, CHARLES F. SPALDING,
Executor,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

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P/S

On Appeal from the United States Tax Court

BRIEF FOR PETITIONER-APPELLANT

Paul, Weiss, Rifkind, Wharton & Garrison
Attorneys for Petitioner-Appellant
345 Park Avenue
New York, New York 10022
212 644-8000

James B. Lewis
Jose E. Trias
Of Counsel

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Preliminary Statement

This is an appeal from a decision of the United States Tax Court (Tannenwald, J.) finding a deficiency in the estate tax of the appellant.

The Memorandum Opinion of the Tax Court, filed July 30, 1975, is unofficially reported at 34 CCH Tax Ct.

Memo. 1074 (1975).[1/] The decision of the Tax Court was entered on October 6, 1975. Jurisdiction is based upon sections 7482 and 7483 of the Internal Revenue Code of 1954 (the "Code").

Issue Presented for Review

Was Charles F. Spalding the surviving spouse of Amy Ann McGinnis Spalding within the meaning of the estate tax provision (section 2056(a) of the Code) that allows a marital deduction for property passing from a decedent to his surviving spouse?

Statement of the Case

There is no dispute over the facts, which were fully stipulated below.

Charles F. Spalding ("Charles") secured a decree of divorce in Nevada in 1964 from Elizabeth C. Spalding ("Elizabeth"), who was a Connecticut resident. In 1968 Elizabeth obtained a judgment from the Supreme Court of New York, in which state Charles was then residing, declaring invalid the Nevada decree of divorce.

1/ The opinion is reproduced on pages 22a through 30a of the Appendix.

Later in 1968 Charles married Amy Ann McGinnis Spalding (the "decedent") in California, where they thereafter resided.

The decedent died on December 18, 1969. By her will she bequeathed and devised to Charles property equal in value to the maximum marital deduction allowed by section 2056(c)(1) of the Code. She bequeathed the balance of her estate in trust for the benefit of her children (of her marriage to Thomas A. Sullivan, who had died in 1965), and directed that all death taxes be paid out of that bequest.

Charles, as the decedent's executor, filed a federal estate tax return and claimed thereon a marital deduction equal in amount to the value of the property bequeathed and devised to him. The Commissioner of Internal Revenue disallowed the marital deduction on the ground that Charles was not the decedent's surviving spouse. The Tax Court sustained the Commissioner's action.

Argument

Reversal of the decision below is mandated by two decisions of this Court: Borax's Estate v. Commissioner, 349 F.2d 666 (2d Cir. 1965), cert. denied, 383 U.S. 935 (1966); Wondsel v. Commissioner, 350 F.2d 339 (2d Cir. 1965),

cert. denied, 383 U.S. 935 (1966). This Court ruled in Borax and Wondsel that a second marriage following divorce must be given effect for federal tax purposes in spite of a declaration of the invalidity of the divorce (and, thus, of the second marriage) by a court located outside of the divorcing jurisdiction. The Tax Court, however, refused in this case to apply that rule.

This Court's rule and its applicability to this case are unmistakable:

In Borax the deceased taxpayer (Herman) and his first wife (Ruth) had resided in New York. They separated in 1946. In August of 1952 Herman obtained ex parte a Mexican decree of divorce. Later in that month Herman married Hermine in two ceremonies, the first in Mexico and the second in Connecticut. Herman and Hermine thereafter lived in New York. In 1953 Ruth obtained, in a contested action, a New York judgment that she was Herman's wife and that the Mexican divorce decree and Herman's marriage to Hermine were invalid.

The Tax Court agreed with the Commissioner that Herman's second marriage should not be given effect for federal tax purposes because of the New York judgment obtained by his first wife. This Court, reversing, held that the second marriage was effective for federal tax

purposes. Therefore, this Court allowed Herman and Hermine to file joint returns and to deduct thereon dependency exemptions for Hermine's parents and for the minor children of her former marriage and Herman's alimony payments to Ruth under the Mexican divorce decree.

In Wondsel the taxpayer (Harold) and his first wife (May) were residents of New York. They separated in 1936. In 1937 Harold obtained ex parte a Florida decree of divorce. In 1939 Harold married Virginia in Connecticut. In 1941 May obtained in New York an uncontested judgment that she was Harold's wife and that the Florida divorce decree and Harold's marriage to Virginia were invalid. In 1946 Harold obtained ex parte a Florida decree of divorce from Virginia. Three months later he married Joyce in New Jersey, where they lived for two years before moving to Connecticut.

As in Borax, the Tax Court agreed with the Commissioner that the New York judgment obtained by the first wife made the subsequent marriage ineffective for federal tax purposes. This Court again reversed and allowed Harold and Joyce to file joint returns and to deduct thereon an exemption for Joyce and Harold's alimony payments to May and to Virginia under the two Florida divorce decrees.

This Court thus described the merits of its rule in Borax: "[B]y depriving the determination of invalidity of any federal tax significance the rule of validation avoids a measure of unevenness and uncertainty; all those taxpayers who have obtained a divorce in a particular jurisdiction are treated the same, regardless of whether the spouse against whom the decree has been obtained is able to, and does, invoke the power of another jurisdiction to declare that divorce invalid." 349 F.2d at 670 (emphasis supplied).

The Tax Court, in its opinion below, attempted to find Borax and Wondsel inapplicable to the estate tax marital deduction. 34 CCH Tax Ct. at 1076, citing Estate of Wesley A. Steffke, 64 T.C. 530 (1975) and Estate of Leo J. Goldwater, 64 T.C. 540 (1975).[2/] The estate tax marital deduction issue is distinguishable, said the Tax Court in Steffke, because it "is more intimately related to State law" than the income tax issues decided in Borax and Wondsel. 64 T.C. at 539.

The Tax Court is mistaken. One may search the income and estate tax statutes in vain for a Congressional

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2/ The Steffke and Goldwater decisions have been appealed by the respective taxpayers to the Seventh Circuit and to this Court.

purpose to relate the latter more closely to state law than the former. In the instances in which Congress has made local law the arbiter of federal taxation Congress has specifically said so. See, e.g., section 2053(a) of the Code. Generally, however, the estate tax, no less than the income tax, has been interpreted to prevent state law from impairing uniform application of the nationwide system of taxation. Compare, e.g., Morgan v. Commissioner, 309 U.S. 78, 80-81 (1940) [estate tax] with Burnet v. Harmel, 287 U.S. 103, 110 (1932) [income tax].

It is particularly unthinkable that Congress, in enacting the estate tax marital deduction, the related gift tax provisions,[3/] and the income tax joint return provisions in 1948 as parts of a single package for equalizing the estate, gift and income tax treatment of residents of community property and non-community property states, intended to recognize ex parte out-of-state divorces for income but not for estate and gift tax purposes. It is equally unthinkable that, if Congress had so intended, it would not have said so in the unprecedentedly detailed and technical committee reports that accompanied the

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3/ For gift tax purposes, Congress (1) permitted husband and wife to "split" gifts made to third parties, in much the same manner as they were permitted to "split" income by filing a joint return (section 2513 of the Code) and (2) provided a gift tax marital deduction for interspousal transfers (section 2523 of the Code).

legislation. H. Rep. No. 1274 and S. Rep. Nos. 1013 and 1013 (Part 2), 80th Cong. 2d Sess. (1948), reproduced at 1948-1 Cum. Bull. 241, 285, 331. The close relation of these income, gift and estate tax provisions is described in the committee reports.[4/] Obviously they should be construed harmoniously.

Surely the transfers of property described in the estate tax marital deduction provision are not more intimately related to state law than alimony payments are. Both arise from the marital relationship and the obligations that attend or are imposed upon it. If this Court had been asked in Borax to review the estate tax return, as well as the income tax returns, of Herman Borax, it would undoubtedly have sustained the estate tax marital deduction as well as the alimony deduction. The tax uniformity sought by this Court in Borax could not have been achieved by giving effect to the living marriage for income tax purposes and to the atrophied one for estate and gift tax purposes.

4/ "A major portion of this bill is devoted to the geographic equalization of income, estate and gift taxes." 1948-1 Cum. Bull. at 257, 301. "[Y]our committee recommends estate and gift splitting which is similar in its effects to the splitting of income tax provided for in this bill." Id. at 305. These provisions establish "a new national system for ascertaining Federal income tax liability" [id. at 303] and "a new national system for ascertaining Federal estate and gift tax liabilities" [id. at 306].

The decedent in this case framed her bequest to Charles in terms of the maximum amount allowable as a marital deduction. She intended, by use of that formula, to qualify the bequest to Charles for the marital deduction. The Tax Court's denial of the marital deduction frustrates the decedent's testamentary intention, and creates an unanticipated heavy tax burden upon the trust created by the will for the decedent's children. Fidelity to the Borax rule rightfully prevents that unfortunate result.

Conclusion

The decision of the Tax Court should be reversed.

Dated: New York, New York
January 14, 1976

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Petitioner-Appellant

James B. Lewis
Jose E. Trias

Of Counsel